



BEFORE THE FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

Tom Norris
Executive Director

Terry Marak
Chief Financial Officer
Financial Services

Cathey George
Director
Technology Planning
& E-Rate Support Center

In the matter of)

Request for Appeal by)

Education Service Center Region 12)
Waco, Texas)

Schools and Libraries Universal Service)
02-06)

Support Mechanism)

Attention: Ms. Gina Spade, Deputy Division Chief)

CC Docket No.

**REQUEST FOR REVIEW OF DECISION OF THE UNIVERSAL
SERVICE ADMINISTRATION COMPANY, SCHOOLS AND
LIBRARIES DIVISION BY
EDUCATION SERVICE CENTER REGION 12 OF SECTION
54.404(a) OF THE COMMISSION'S RULES**

Funding Year 10: July 1, 2007 to June 30, 2008
Billed Entity Name: Education Service Center Region 12
Billed Entity No.: 141138
Billed Entity FCC Registration No.: 0007130214
Form 471 No.: 558544
Funding Request Number(s): 1595227, 1595349, 1595436, 1595532,
1595639, 1595781, 1803977

I. Introduction and Summary

Education Service Center Region 12 ("ESC12"), and in accordance with Sections 54.719(c) and 54.722 of the Commission's Rules, appeals a decision of the Universal Service Administrative Company ("USAC"), Schools and Libraries Division (the "SLD"). Specifically, ESC12 appeals the USAC decision issued November 29, 2010, (EXHIBIT A) in which it affirmed a determination that the ESC12 had a 'tainted' FCC Form 470 (913830000608590). According to supporting documentation filed by the FCC, ESC12 can serve as both a vendor and applicant because they are a state entity.¹ Without regard to ESC12 being an Educational Service Agency ("ESA"), the SLD made the false assumption that because ESC12, an applicant, has a relationship with a vendor ("EDLINK 12") the FCC Form 470 is "tainted". ESC 12 (applicant) and EDLINK 12 (vendor) do reside at the same address so that this ESA can serve the member districts assigned to

¹ See FCC Public Notice, DA No. 10-2356, *Wireline Competition Bureau Provides Guidance Following Schools and Libraries Universal Service Support Program Sixth Report and Order*, page 4. Released December 15, 2010.

them by the state of Texas legislature. We respectfully request that the commission rescind the Commitment Adjustment ("COMAD") letter filed by the SLD and allow the already funded Funding Requests ("FRN") issued for funding year 2007-2008 as referenced above to remain funded.

The undersigned is the Chief Financial Officer ("CFO") for ESC12 located at 2101 W. Loop 340, Waco, Texas 76712, a Texas school district non-instructional facility ("NIF") which is an applicant under the Universal Service Support Mechanism ("E-Rate Program" or "Program") for the Schools and Libraries Division Support Mechanism ("SLD"), commonly known as the E-Rate program. This request comes before the Commission in a timely manner from the Administrator decision letter dated November 29, 2010.

II. Background and History:

ESC 12 is an educational service center located in Waco, Texas and spans twelve counties serving 90 school districts and charter schools. ESC12 provides professional development and technical assistance for the purpose of improving student performance for all students. The center is one of 20 centers located throughout the state of Texas. In 1967, the Texas Legislature authorized the State Board of Education to set up regional ESA's as part of its commitment to provide quality training and support to educators and school districts. ESC12 continues to experience growth in size and the services it provides to educators, districts and charter schools. These efforts have proven themselves critical in the overwhelmingly positive improvement of Central Texas school districts and school children over the past twenty years. ESC 12 is a service organization, not a regulatory arm of the Texas Education Agency. Therefore, any district or campus may choose to participate in services provided by ESC12 on a voluntary basis.

On October 19, 2010, eight (8) Commitment Adjustment ("COMAD") notification letters were received by ESC12 (Exhibits A, B, C, D, E, F, G, and H respectively). These COMAD letters dealt with funding from 2007-2008. In those COMAD letters, ESC12 was notified that the funding for all the FRN's listed above would be rescinded in full. The reasoning behind these COMAD's was summarized as follows from one of the letters:

"After a thorough investigation, it has been determined that this funding commitment must be rescinded in full. During the course of a review it was determined that service provider contact information appeared on the cited Form 470. Service Provider contact information appears on the cited Form 470 (Number: 913830000608590) and is associated with EDLINK 12 Telecommunications Network, (EDLINK12). The applicant did not clearly demonstrate that there is separate functionality from the service provider. EDLINK12 was selected a service provider pursuant to the posting of this Form 470. FCC rules require applicants to submit a Form 470 to initiate the competitive bidding process, and to conduct a fair and open process. If the applicant has posted a Form 470 that contains contact information for a service provider that requirement, and FCC rules consider this Form 470 to be tainted. All Funding Requests that relate to this Form 470 are required to be denied because the Form

470 is tainted. Accordingly, the commitment has been rescinded in full and USAC will seek recovery of any disbursed funds”.

On November 12, 2010, seven (7) appeals were written (Exhibits A, B, C, D, E, F, G, and H respectively) to the SLD to reverse the decision to rescind the commitments made for seven (7) Telecommunication Services (“TC”) funding requests (listed above).

“According to USAC records, it was determined that Education Service Center Region 12 (ESC Region 12) and Edlink12 Telecommunications Network (Edlink12) share the same address. Based on information provided by you in an email dated March 7, 2008, there are other functional areas where you share resources therefore, the applicant did not clearly demonstrate that there is a separate functionality. It was determined that Edlink12 is the Internet Access service provider that was chosen by ESC Region 12 for FRN: 1601938 (within FY2007 Form 471: 572937) and the establishing Form 470 for that funding request (as well as all FRN's listed within the above Form 471) is Form 470: 913830000608590. USAC has determined that given the relationship between ESC Region 12 and Edlink12 the Form 470 is considered to be tainted. The rules of this support mechanism state that if a Form 470 is deemed tainted, all FRNs which reference that Form 470 are to be denied. You have failed to provide evidence on appeal that USAC had erred in its initial determination. Consequently, the appeal is denied.”

In each appeal letter to USAC we clarified that each FRN submitted for telecommunications services by ESC12 should not be affected because of vendor involvement. We site the following reasons:

- ESC12 is an ESA and qualifies for USAC’s special eligibility conditions to receive service²:

“Federal law defines an ESA as a "regional public multiservice agency authorized by State statute to develop, manage, and provide services or programs to local educational agencies." To determine whether an ESA is eligible to receive Schools and Libraries support as an applicant, FCC rules governing the program require USAC to determine whether the ESA provides elementary or secondary education as determined under state law. USAC determines whether the entity provides elementary or secondary education to its student population and whether the ESA facility is eligible for support because elementary or secondary education, as defined in state law, is provided at that facility. FCC rules do not specifically define or address ESAs.

USAC conducts a biennial survey of states and territories to determine whether ESAs are eligible to receive funding. State and territory officials are asked to describe the programs served by ESAs and whether ESAs operate facilities that they either own or lease that contain classrooms. The officials are asked to provide legal support for the information they

² See The SLD’s website: <http://www.universalservice.org/sl/applicants/step01/esa-guidelines/esa-eligibility-table.aspx>

supply and to certify the accuracy of their determinations. The Eligibility Table for Educational Service Agencies includes the most recent information provided by the states and territories.”

ESA's in Texas are listed on the SLD's website as an eligible ESA as authorized by Texas.³

- EDLINK 12 is an Internet Service Provider (“ISP”) and is not eligible to provide TC services. Therefore EDLINK 12 could not provide any of the services in this category.⁴
- While the ESC12 and EDLINK 12 addresses are the same, this is allowable as described in USAC's special eligibility conditions for ESA's.⁵

“ESAs may perform as many as four roles in the Schools and Libraries Program:

- *ESA's are applicants for program discounts.*
- *ESA's provide program consulting assistance to their component districts.*
- *ESA's review and approve district Technology Plans.*
- *In some instances, ESA's are service providers of eligible services.”*
- Since EDLINK 12 cannot provide any services for which ESC12 is requesting, there is absolutely no conflict of interest in any of the above mentioned FRN's.

ESC12 realizes that the FRN for Internet Access on a different Application (572937) and FRN (1601938) should not have been filed because of a potential conflict of interest that is present and cannot be overcome due to resources available currently. These funds are being returned to the SLD immediately. In the SLD's website⁶ specific references are made that indicate a possible conflict of interest as it relates to ESA's specifically.

“The ESA is large enough to provide organizational and functional separation between staff acting as service providers and staff providing technology plan support and application and administration assistance. However, the ESA must be prepared to clearly show the separation of functions to USAC with appropriate documentation. Examples of such are documentation include organizational flow charts, budgetary codes, and supervisory administration.

³ See the SLD's website: <http://www.usac.org/sl/applicants/step01/esa-guidelines/esa-eligibility-table.aspx>

⁴ See the SLD's website: <http://www.universalservice.org/sl/applicants/step01/esa-guidelines/default.aspx>

⁵ See the SLD's website: <http://www.usac.org/sl/applicants/step01/esa-guidelines/esa-eligibility-table.aspx>

⁶ See the SLD's website: <http://www.usac.org/sl/applicants/step01/esa-guidelines/default.aspx>

ESC12 is no longer able to easily separate the vendor staff from the applicant staff and all services received from EDLINK 12 to ESC12 are not included in the E-Rate process.

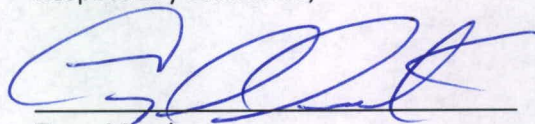
For the reasons outlined in this appeal, ESC12 believes it has complied with the intent of its obligations to the best of their ability pursuant to both 47 C.F.R. § 54.504(a). The SLD's decision in this case would require ESC12 to reimburse USAC for over \$27,500.00 which would cause undue hardship on ESC12. As such, the SLD's determination of November 29, 2010 should be reversed by the Commission.

There is no evidence in the record that ESC12 engaged in any activity intended to defraud or abuse the E-Rate program. Denying its requests for funding would not serve the public interest and prevent ESC12 from receiving E-Rate funding for work already performed by all vendors for services that are eligible and in compliance with program rules.

CONCLUSION

ESC12 respectfully requests that the Commission reverse the SLD's determination of November 29, 2010 in which it affirmed a determination that ESC12's Form 471 (558544) filed with respect to its procurement of services of 2007-2008 involved a tainted FCC Form 470.

Respectfully submitted,



Terry Marak
Chief Financial Officer
Education Service Center Region 12
2101 W. Loop 340
Waco, TX 76712

Enclosures:

ExhibitA_ESC12_SLDAppealDenialLetter11-29-2010.pdf
ExhibitB_CenturyLink_USACappeal_FRN1595639.pdf
ExhibitC_Verizon_USACappeal_FRN1595532.pdf
ExhibitD_ATTCorp_USACappeal_FRN1595349.pdf
ExhibitE_ATTMobility_USACappeal_FRN1595781.pdf
ExhibitF_BirchTelecom_USACappeal_FRN1595436.pdf
ExhibitG_SBCLongDist_USACappeal_FRN1595227.pdf
ExhibitH_SouthwesternBell_USACappeal_FRN180977.pdf